definition. *State v. Buswell*, 40 Neb. 158; *contra*, *State v. Mylod*, 20 R. I., 632. More stringent statutes should be passed or a more liberal interpretation given to existing ones. The language used in the New York case justifies the conclusion that no prosecution can be successfully maintained against a Christian Scientist in that state. It is far from the intention to state that every one who entertains the beliefs sanctioned by this sect and who follows its teachings should be considered as practicing medicine, but the assertion is made that its exponents, who hold themselves out professionally as engaged in whatever is in reality "the healing art," although that particular nomenclature is repugnant to their tenets, should be considered as within the reason and spirit of the statute.

The point on which there is the widest diversity of opinion is in regard to osteopaths. On either side, a cluster of decisions may be found, but the decided weight of authoritv is to the effect that they are engaged in the practice of medicine. *Jones v. People*, 84 Ill. 453. A knowledge of anatomy, physiology, hygiene, histology and pathology is essential to them, as it is to them as it is to a regular physician, and the only point of distinction is as to therapeutice, and the day has passed when all reliance is placed in drugs. Their value in many cases is indisputable, yet there are diseases in which other forms of treatment are far more efficacious. Consumption is instanced. And yet it would be an anomaly to say that persons engaged in these other modes of treatment were not practicing medicine. The Alabama Court in the case of *Bragg v. State* (*supra*), in an exceedingly interesting decision, traces the development of the science and demonstrates that in its primary sense it applies to the art of treating or of attempting to cure or alleviate any mental or physical ailment by any means whatever, and in its popular acceptation the term has become materially perverted.

The cases will be found collated and the subject discussed in 3 L. R. A. (N. S.) 763, note to *O'Neill v. Tennessee;* and *Am. & Eng. Enc. of Law*, 2nd Ed., Vol. 22, p. 785.

PROFESSIONAL CONDUCT—SOLICITING BUSINESS.

In the case of *Ingersoll et. al. v. Coal Creek Coal Company*, 98 N. W. 178, the Supreme Court of Tennessee availed itself of an opportunity to denounce as unprofessional a lawyer's active solicitation of business. A mine explosion had occurred, causing great loss of life and many injuries. A young lawyer, Chandler, was one of many attorneys who rushed to the scene of disaster. The Court of Chancery stated that Chandler "entered actively into competition for business, that he boldly and openly saw widows and others whose husbands and next of kin had been killed in the explosion, and sought as other lawyers were doing, to have them entrust the prosecution of suits to his firm, but that it does not appear that he practiced any fraud or deception, or made any false representations to get the cases for his firm." Chandler secured some forty cases which were to be prosecuted on a contingent fee and of this he was to receive a portion from

Ingersoll and Peyton, the law firm for whom the cases were solicited. This firm prepared and filed declarations in all the cases and prepared to try them. The Coal Company, through their general counsel, employed other counsel or agents and negotiated settlements, ignoring Ingersoll & Peyton, the complainants in this case, the attorneys of record in the damage suits. It was conceded that the plaintiffs had the right to recover for their services unless they were precluded from recovery by unprofessional conduct. The court said:

"We are of opinion that, under the facts disclosed by the finding of the Court of Chancery Appeals, complainants are not entitled to recover, because these facts show acts of impropriety inconsistent with the character of the profession and incompatible with the faithful discharge of its duties. We cannot agree to several propositions advanced by complainants. We cannot agree that in these latter years a spirit of commercialism has lowered the standard of the legal profession. We cannot agree that the practice of law has become a "business" instead of a "profession," and that it is now allowable to resort to the practices and devices of business men to bring in business by personal solicitation, under the facts shown in this case. As to how far an attorney may go in soliciting business, or whether he may solicit at all, we are not called upon to decide; but when such a case is presented, as is disclosed in this record, of attorneys rushing to the scene of disaster in hot haste, and competing with each other in soliciting the bereaved ones to allow them to sue for their losses, we feel that we are called upon to say in no uncertain terms that such conduct is an act of impropriety and inconsistent with the character of the profession. We cannot, we dare not, lower the standard of the legal profession to that of a mere business, in which fleetness of foot, or the celerity of the automobile, determines who shall be employed. The miserable victims of the disaster are dazed by the terrible bereavement. They are in no condition to consider their rights to damages. In their extremity, they fly to any one promising relief, when, if left to time and more mature consideration, they would be enabled to make, perhaps, a better choice. In addition, it is unbecoming a member of the profession, and a public scandal, and when he bases his right to recover fees upon such improper conduct, and lowering the character of the profession and the court, it is no excuse that other attorneys do the same; but this is rather a reason why this court should act promptly and decidedly, in order that an end may be put to the practice. It is no excuse that corporations which have caused such disasters have been alert to send their agents and representatives to the scene with a view of forestalling suits and making favorable compromises. This court has never failed to condemn this practice in the strongest terms; and, whenever a case has come before it which in any way smacked of fraud or undue advantage arising out of such conduct, this court has not been slow to disregard or set aside improper or hard settlements. But such agents of corporations are not, as a rule,

officers of the court, nor do they occupy that high status which the law places the attorney upon; and we think that we can safely say that if any attorney should make such settlement, under such circumstances, this court would not hesitate to disbar him. It is said that there is no precedent for refusing fees because of such conduct. If this be so, we are admonished by the record in this case that it is high time that such a precedent be set, and in such terms as may not be mistaken or misunderstood."

This particular phase of professional conduct does not seem to have been before presented for judicial consideration. To that extent the present case is peculiar. Text writers and cases in dealing with professional conduct are concerned chiefly with grounds for disbarment. They thus treat particularly aggravated cases of fraud and instances of gross misconduct. Soliciting business by a professional man is nearest akin to advertising. Both the legal profession and the medical profession in their respective associations have discussed and condemned such practices as opposed to public welfare and not in line with the highest professional ideals. An eminent jurist has said, "The world relies on the lawyer to tell what the conduct of one man should be to others." On account of such an influential position in a community it is important that the honor and dignity of the profession should be maintained and that a professional pride should prompt all lawyers to hold aloof from common commercialism that cannot but lower the dignity of the bar. As a lawyer is an officer of the court, so the judge of the court has discretionary powers in the punishment of unprofessional conduct. Chief Justice Taney, in Ex Parte Secombe (19 How. 9) speaking of the court's power to disbar, said, "The power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the Court, or from passion, prejudice or personal hostility, but it is the duty of the Court to exercise and regulate it by sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the Courts as the rights and dignity of the Court itself." The Supreme Court of Tennessee in the present case has most strongly asserted this power of the judiciary to discipline lawyers not only in disbarable misconduct, but requires of them as officers of the court a liability for unprofessional acts not reached by statute or the letter of the law.

Many states guard against solicitation of legal business in some of its forms by statute. In Langdon v. Conlin, 67 Neb. 243; Alpers v. Hunt, 86 Cal. 78, a contract by an attorney to pay a layman one-third of his fee if layman procures the employment of the attorney by a litigant, is contrary to public policy. The court says, "Such practice would tend to increase the amounts demanded for professional services. In such a case an attorney would be induced to demand a larger sum for his services, as he would have to divide such sum with a third person."

It is important that the legal profession be respected by people of all classes. The decision in *Ingersoll v. Coal Creek Coal*

Company will have a tendency to bring about this result by its condemnation of a practice which has become prevalent in certain localities.

FUGITIVE FROM JUSTICE.

The decision of the Supreme Court of the United States in the recent case of *Appleyard v. Massachusetts*, handed down December 3, 1906, is of interest not because the result reached was novel or unexpected but for reason of the fact that it is a final and complete adjudication of a matter on which the position assumed, while supported by the decided weight of authority, was yet the subject of some contrariety of opinion. It embodies a construction of the term "fugitive from justice," as found in the act of Congress respecting interstate extradition, and sanctions the proposition that the *actual intent* of the alleged offender, in leaving the jurisdiction where the crime was committed, is not material to a determination of his *status*.

The case of *Pettibone v. Nichols*, was passed upon immediately preceding by the same court. (See Comment XVI, YALE LAW JOURNAL 347). While cognate to the present case in many particulars, the principle announced is distinctively different; it there being held that a circuit court of the United States, when asked upon *habeas corpus*, to discharge a person held in actual custody by a state for trial in one of its courts under an indictment charging an offense against its its laws, cannot properly take into consideration the methods whereby that custody was obtained.

The decision in *Appleyard v. Massachusetts* is a confirmation of the *dictum* in *Roberts v. Reilly*, where it was said, "To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the state in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having committed within a state that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another." 116 U. S. 80. This *obiter dictum* had been followed by several decisions in state courts. *State v. Richter*, 37 Minn. 438; *Hibler v. State*, 43 Tex. 197, 201; and others cited in principal cases. In the Minnesota case the statement is made, "the important thing is not their purpose in leaving, but the fact that they had left, and hence were beyond the reach of the process of the state where the crime was committed," and again, "the simple fact that they are not within the state to answer its criminal process, when required, renders them, in legal intendment, fugitives from justice, regardless of their purpose in leaving." These cases represent the weight of authority, both logically and numerically.

As opposed to the prevailing view may be cited *Degant v. Michael*, 2 Ind. 396 and *United States v. O'Brian*, 3 Dillon 381. In the latter there was under consideration a state statute to